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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. MICHAEL STEVEN SNITZER, Defendant and Appellant.	B212974 (Los Angeles County Super. Ct. No. PA062177)

APPEAL from a judgment of the Superior Court of Los Angeles County, Barbara M. Scheper, Judge. Affirmed.

William L. Heyman, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Scott A. Taryle and Ryan M. Smith, Deputy Attorneys General, for Plaintiff and Respondent.

Michael Steven Snitzer appeals from the judgment entered following his conviction by jury of failing to register as a sex offender (Pen. Code, § 290, subd. (b)), having suffered a prior felony conviction (Pen. Code, § 667, subd. (d)), with an admission that he suffered a prior felony conviction (Pen. Code, § 667, subd. (d)). The court sentenced appellant to prison for five years. We affirm the judgment.

FACTUAL SUMMARY

Viewed in accordance with the usual rules on appeal (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206), the evidence, the sufficiency of which is undisputed, established that on March 26, 2008, appellant, a sex offender, failed to register within five working days of changing his residence.

CONTENTIONS

Appellant claims (1) this court should review the sealed record of the in camera proceedings on his *Pitchess*[1] motion, and (2) the trial court abused its discretion by dismissing only one of appellant's "Three Strikes" law prior felony convictions.

DISCUSSION

1. *The Trial Court Fulfilled Its Responsibilities Under Pitchess.*

a. *Pertinent Facts.*

On October 7, 2008, appellant filed a pretrial discovery motion pursuant to *Pitchess*, seeking various information in the personnel files of Los Angeles Police Officer Robert Greenbaum, an officer who testified at appellant's trial.

At the November 3, 2008 hearing on the motion, the court tentatively ruled in open court that there was "good cause for an in-camera hearing as to fabrication" and indicated the court would then conduct an in camera hearing. The reporter's transcript of the proceedings held in open court on that date reflects that a separate sealed transcript of the "*Pitchess* hearing" was lodged with the trial court. The reporter's transcript later reflects that, in open court, the court stated, "I did have an in-camera review of all the complaints relating to officer Greenbaum. There is no discoverable complaints. [*Sic*.]"

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[1] *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*).

b. *Analysis.*

Appellant asks this court to review the sealed record pertaining to his *Pitchess* motion to determine whether the trial court properly ruled there were no discoverable complaints.

Trial courts are granted wide discretion when ruling on motions to discover police officer personnel records. (*People v. Samayoa* (1997) 15 Cal.4th 795, 827; *People v. Memro* (1995) 11 Cal.4th 786, 832.) We have reviewed the contents of the sealed transcript of the November 3, 2008 in camera hearing. The transcript constitutes an adequate record of the trial court's review of any document(s) provided to the trial court during the in camera hearing, and said transcript fails to demonstrate that the trial court abused its discretion by ruling there were no discoverable complaints to be disclosed from the personnel files of Greenbaum. (*People v. Samayoa*, *supra*, at p. 827; see *People v. Mooc* (2001) 26 Cal.4th 1216, 1228-1230, 1232.) The trial court fulfilled its responsibilities under *Pitchess*.

2. *The Trial Court Did Not Err by Dismissing Only One of Appellant's Three Strikes Law Prior Felony Convictions.*

a. *Pertinent Facts.*

The information alleged, inter alia, that in case No. A143777, appellant suffered two 1980 Three Strikes law prior felony convictions (strikes) for rape. The probation report prepared for a July 2008 hearing reflects that appellant, who was born in May 1960, had 14 aliases and listed three other birth dates. There was also an indication in the report that appellant had a substance abuse problem.

The report reflects as follows concerning appellant's adult criminal history.[2] In 1979, in case No. A143777, appellant was convicted of robbery, and rape with firearm

[2] The report contains references to undescribed crimes violating nonexistent Penal Code section numbers. In particular, the report refers to a 1976 misdemeanor conviction for a violation of Penal Code section "76A" for which appellant was placed on probation for one year, a 1979 misdemeanor conviction for a violation of Penal Code section "2031A" for which appellant was placed on probation for one year, a 1987 conviction for a violation of Penal Code section "2020A" for which he was placed on probation for one

use, and sentenced to prison for seven years. In 1989, he was convicted of bringing a firearm, deadly weapon, or explosive into prison (Pen. Code, § 4574, subd. (a)), and placed on probation for three years. In 1989, he apparently was convicted of burglary, for which he was sentenced to prison for three years four months. In 1989, he was also convicted of driving without possessing a driver's license (Veh. Code, § 12951, subd. (a)). In 1992, he was convicted on three counts of forgery (Pen. Code, § 470, subd. (a)) and placed on probation for five years. In 1993, he was convicted of illegal possession of a syringe and placed on summary probation for two years. In 1994, he was convicted again of that charge and placed on probation for one year.

In 1997, appellant was convicted of trespass and placed on summary probation for one year. In 1998, appellant was convicted of being under the influence of a controlled substance (Health & Saf. Code, § 11550, subd. (a)), and placed on summary probation for two years. In 1998, appellant was convicted of failing to register as a sex offender (Pen. Code, § 290, former subd. (g)(2)) and sentenced to prison. In 2004, appellant was convicted of possession of controlled substance paraphernalia (Health & Saf. Code, § 11364) and placed on summary probation for two years. In 2007, he was convicted on two counts of a violation of Penal Code section 12020, subdivision (a).[3]

On December 2, 2008, prior to the voir dire of prospective jurors, appellant asked the court to strike both strikes so he could "plead open" to the present offense with the understanding he would be placed on probation. Appellant argued as follows. The court had conducted the preliminary hearing and the trial. The court was aware that, prior to the present offense, appellant had complied with Penal Code section 290 for years. The

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year, and a 1987 conviction for a violation of Penal Code section "46.1" for which he was sentenced to prison for two years and released on parole in July 1988. We do not rely on these matters in our analysis.

[3] The report lists two such 2007 convictions, each with a different case number. However, during sentencing argument on December 2, 2008, the court and parties appeared to indicate the convictions were in fact one conviction. We assume appellant suffered only one conviction for a violation of Penal Code section 12020, subdivision (a) in 2007.

strikes were extremely old and based on the same case. Although appellant had a substantial criminal record after 1980, most of those offenses were nonviolent misdemeanors, and, since 1998, appellant had suffered only two misdemeanor convictions. The totality of the circumstances and the probation report's indication of appellant's history of drug usage were mitigating factors since the court could order appellant to participate in a drug program instead of sentencing him to prison.

The prosecutor indicated that one of the rape strikes was in fact a robbery strike, and moved that the information be amended accordingly. The court granted the motion. The prosecutor noted both strikes arose from the same set of facts.

The prosecutor opposed appellant's request to strike the strikes, and argued as follows. The strikes were very serious offenses. Appellant had a continuing history of criminality. He had served 85 percent of a six-year prison sentence on his 1998 conviction for failing to register as a sex offender, which explained why he had not engaged in criminal conduct during that time. The three counts alleged in the present case[4] were related to the behavior that led to the 1980 rape and robbery. Appellant had multiple long-term prison commitments. There was no reason to strike both strikes and place appellant on probation.

The court in the present case suggested the present case may have constituted a violation of appellant's probation granted in 2007 for his violation of Penal Code section 12020, subdivision (a). The court also indicated as follows. Appellant's criminal history demonstrated continuing criminality even though the strikes were the most serious offenses. The 2007 Penal Code section 12020, subdivision (a) offense was a very serious offense. The fact appellant was on probation at the time of the present offense and previously had been convicted of failing to register as a sex offender should have put him

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[4] The information originally alleged three violations of Penal Code section 290, subdivision (b) (counts 1 through 3). The jury acquitted appellant on count 1 and, after the jury deadlocked on count 3, the court declared a mistrial as to that count and dismissed it.

on notice as to the importance of the registration requirements. The court denied without prejudice appellant's request to strike the strikes.

The prosecutor then moved to strike the robbery strike on the ground the present offense was not a strike. The prosecutor suggested he was doing so because of his office's policy. The court granted the motion. On December 9, 2008, appellant was convicted in the present case as previously indicated.

At the December 9, 2008 sentencing hearing, appellant requested that the court strike the remaining strike. Appellant argued his previous grounds plus the following. Appellant developed an addiction to methamphetamine after completing military service. Testimony was presented at trial that appellant was compassionate and had helped various people. The requisite five-year washout period for the Penal Code section 667.5, subdivision (b) enhancement barely had been satisfied. Even if the court did not wish to strike the strike to enable appellant to participate in a drug program, the court should strike the strike, sentence him to prison, and stay the Penal Code section 667.5, subdivision (b) enhancement.

The court indicated as follows. Even though the strike was old, appellant's criminal history after he suffered that strike was lengthy. It would not be an appropriate exercise of the court's discretion to strike the strike, and the court would not place appellant on probation even if it were within the court's discretion to do so. The court sentenced appellant to prison for five years, consisting of the two-year middle term, doubled pursuant to the Three Strikes law, plus one year for the Penal Code section 667.5, subdivision (b) enhancement.

b. *Analysis.*

Appellant claims the trial court erroneously failed to dismiss both strikes. We disagree. The court presided at appellant's preliminary hearing and at trial, and heard argument of counsel on appellant's pre- and post-trial requests to strike. We have considered appellant's arguments, including his arguments that he is a compassionate person possessing various skills and capabilities.

In light of the nature and circumstances of appellant's current offense and the remaining strike, and the particulars of his background, character, and prospects, appellant cannot be deemed outside the spirit of the Three Strikes law as to the remaining strike, and may not be treated as though he previously had not suffered it. (Cf. *People v. Williams* (1998) 17 Cal.4th 148, 161-164.) We hold the trial court's order refusing to strike the remaining strike was sound, and not an abuse of discretion. (Cf. *People v. Williams*, *supra*, at pp. 158-164; *People v. DeGuzman* (1996) 49 Cal.App.4th 1049, 1054-1055; *People v. Askey* (1996) 49 Cal.App.4th 381, 389.)

DISPOSITION

The judgment is affirmed.

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KITCHING, J.

We concur:

KLEIN, P. J.

CROSKEY, J.